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November 23, 1998

BY COURIER

Magalie R. Salas, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, SW
12th Street Lobby, TW-A325
Washington, DC 20554

Re: CC Docket No. 98-184

Dear Ms. Salas:

On behalf of Freedom Ring Communications, LLC d/b/a BayRing Communications, enclosed for filing is an original and four copies of its Comments in the above-referenced docket.

Also enclosed is an extra copy of these Comments. Please date stamp the copy and return it in the enclosed envelope.

If you have any questions, please contact me.

Very truly yours,

Morton J. Posner

Counsel for Freedom Ring Communications, LLC d/b/a BayRing Communications

cc(w/encl.): Janice Myles
Michael Kende
To-Quyen Truong
ITS

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
GTE CORPORATION,	)	
Transferor,	)	
and	)	CC Docket 98-184
	)	
BELL ATLANTIC CORPORATION,	)	
Transferee,	)	
	)	
For Consent to a Transfer of Control	)	

COMMENTS OF FREEDOM RING COMMUNICATIONS, LLC D/B/A BAYRING COMMUNICATIONS

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Dated: November 23, 1998

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SUMMARY

Freedom Ring Communications, LLC d/b/a BayRing Communications ("BayRing") opposes the proposed transfer of control of GTE Corporation to Bell Atlantic Corporation. The proposed transaction would create a massive telecommunications giant with an entrenched monopoly. Both companies have tremendous incentive to resist local market-opening measures, and their efforts to do so are well documented. In BayRing's experience, Bell Atlantic has substantially delayed its market entry in New Hampshire, as well as failed to provision services to BayRing in such a way to avoid repeated service-affecting outages. The combination of these companies will neither advance local nor long distance competition. The Commission should reject the proposed transaction.

In the event that the Commission approves the proposed transfer, stringent market-opening conditions should be imposed. Specifically, BayRing suggests that the Commission require that:

- GTE charge forward-looking prices for interconnection and unbundled network elements;
- Bell Atlantic and GTE commit to eliminate unreasonable restrictions on resale of their retail services and to provide greater wholesale discounts on resold services in accordance with the avoidable cost standard on the Commission's *Local Competition Order*;
- GTE make arbitrated interconnection, unbundled element and wholesale discount rates available to all competitors;
- Bell Atlantic and GTE refrain from charging special construction costs;

- Bell Atlantic and GTE offer intraLATA toll dialing parity no late than February 8, 1999;
- Bell Atlantic and GTE establish a competitively neutral interim number portability cost recovery mechanism;
- Bell Atlantic and GTE abide by strict controls on Winback Programs;
- Bell Atlantic and GTE provide technically feasible combinations of network elements at forward-looking cost-based rates;
- Bell Atlantic and GTE commit to immediate development of operations support systems that will enable competitors to provide services at parity with the service that Bell Atlantic and GTE provide to their own end users and that the cost of these systems not be saddled on competitors on other than a competitively neutral basis;
- Bell Atlantic and GTE provide more flexible collocation arrangements;
- Bell Atlantic and GTE impose only reasonable, cost-based non-recurring charges, using Total Element Long Run Incremental Cost principals;
- Bell Atlantic and GTE make voicemail services available for resale at an avoided cost discount;
- Bell Atlantic and GTE submit monthly performance reports; and
- Bell Atlantic and GTE satisfy performance thresholds for services to competitors.

In addition, sanctions should apply for the companies' failure to abide by the Commission's market-opening conditions.

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COMMENTS OF FREEDOM RING COMMUNICATIONS, LLC
D/B/A BAYRING COMMUNICATIONS

Freedom Ring Communications, LLC d/b/a BayRing Communications ("BayRing"), by counsel, hereby submits its Comments in opposition to GTE Corporation's ("GTE") proposed transfer of control to Bell Atlantic Corporation ("BA"). The parties to the proposed transaction are entrenched monopolies which pursue coordinated strategies to delay -- or in some cases to prevent -- opening local exchange markets to competition. Permitting those companies to merge would exacerbate delays in implementing meaningful local competition, and would not enhance competition in either local or long distance markets. BayRing urges the Commission to deny the proposed transfer or, in the alternative, to place conditions of the transfer.

I. INTRODUCTION

BayRing is a certificated New Hampshire competitive local exchange carrier ("CLEC") which attained the first negotiated interconnection agreement with BA in that state.[1/] BayRing recently began providing New Hampshire local exchange service.[2/]

BA and GTE ask the Commission to place its imprimatur on a combination of companies with less than exemplary records of compliance with the Act. As will be described, BayRing's own experience is that BA has delayed BayRing's local market entry for reasons entirely within BA's control. Although BayRing does not operate in GTE territory, BayRing is aware of GTE's tactics for delaying competition in GTE's own service area. The combination of two monopolists will not enhance possibilities for local competition in the nation. Rather, the evidence shows that a combined BA/GTE will dig in its heels, preventing even the first competitor from entering the market when possible, then delaying the technical and operational implementation of competitors' interconnection agreements if they can.

One day, BayRing hopes to gain enough market share in New Hampshire that it can free itself from dependence on BA to the degree that BayRing attains a measure of self-control with respect to its business plans. To date, however, BayRing is at BA's mercy to attain even a toehold

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1/ New Hampshire P.U.C. Docket Nos. DE 96-165 and DE 96-336.

2/ The New Hampshire Public Utilities Commission granted BayRing's Petition seeking implementation of a "fresh look" procedure whereby customers in long-term BA service contracts can take service from a new facilities-based CLEC without incurring full termination liability. BayRing recently became eligible to take advantage of the fresh look opportunity in the Portsmouth, New Hampshire exchange area. *Freedom Ring, L.L.C. Petition Requesting that Incumbent LECs Provide Customers with a Fresh Look Opportunity,* Order No. 23,061, DR 96-420 (N.H.P.U.C. Nov. 6, 1998).

in the facilities-based Portsmouth local exchange market. If the proposed transaction is approved, the record shows that the situation will only get worse.

II. THE PROPOSED MERGER WOULD CREATE A MASSIVE TELECOMMUNICATIONS GIANT WITH AN ENTRENCHED MONOPOLY POSITION

The proposed BA/GTE merger would transform local competition in this country. BA already controls over 41 million access lines[3/] and serves the headquarters of 175 of the Fortune 500 companies.[4/] After merging with GTE, the combined company will have 63 million access lines,[5/] or over one-third of the access lines in the country. When one considers the BA/GTE merger with the proposed SBC/Ameritech merger, the combined companies will share between them over 67% of the access lines in the country,[6/] and a larger share of large business access lines.[7/]

Simply put, this merger is a giant step toward reconstituting the pre-Divestiture Bell System, a result which is surely antithetical to the intent of the Telecommunications Act of 1996 ("the Act").

3/ BA Media Fact Sheet, http://www.ba.com/kit/ (visited Oct. 30, 1998).

4/ "Bell Atlantic and GTE Agree to Merge," Press Release July 28, 1998, http://www.ba.com/nr/1998/Jul/19980728001.html.

5/ "Bell Atlantic and GTE Agree to Merge," Press Release, July 28, 1998.

6/ FCC, *Statistics of Common Carriers*, Table 2.10.

7/ SBC claims that "224 Fortune 500 companies are headquartered in the 13 states served by SBC, Ameritech, and SNET." *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferee, to SBC Communications Inc., Transferor*, CC Docket 98-141 ("*SBC/Ameritech Merger Proceeding*"), Affidavit of James S. Kahan, ¶ 49 (atch. to SBC-Ameritech *Description of the Transaction, Public Interest Showing and Related Demonstrations* ("SBC/Ameritech Public Interest Statement"). BA serves 175 Fortune 500 headquarters. "Bell Atlantic and GTE Agree to Merge," Press Release July 28,1998, http://www.ba.com/nr/1998/Jul/19980728001.html. That makes a total of 399 Fortune 500 headquarters for the two merged companies combined.

That Act was designed to introduce competition into local exchange markets, not to encourage industry consolidation in place of competition. Yet a combined BA/GTE is particularly egregious because neither company has opened its local markets to meaningful competition from competitors. Indeed, since the day the Act was signed, these companies have strenuously resisted implementation of the market-opening measures required by the Act. Under these circumstances, the Commission should not approve a consolidation of two local market monopolies, thereby giving them increased market power and an increased incentive not to allow competition in their own regions and not to engage in meaningful competition elsewhere.

In reviewing the proposed BA/GTE transaction, the Commission must consider "not merely an appraisal of the immediate impact of the merger upon competition, but a prediction of its impact upon competitive conditions in the future."[8/] The impact of the merger on future competition is a particularly important consideration in the dynamic and changing telecommunications market. There are two ways in which the extreme concentration associated with the merger will severely affect the future of competition in the local exchange market.

A. A combined BA/GTE has greater incentive to resist market-opening measures.

In reviewing BA's last proposed merger, the Commission recognized that a merger between two large LECs may have an effect on the parties' willingness to cooperate with market-opening measures:

8/ *United States v. Philadelphia National Bank*, 374 U.S. 321, 362 (1963); *Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to WorldCom, Inc.*, CC Docket No. 97-211, ¶ 9 (Sept. 14, 1998) ("*MCIWorldCom Merger Order*").

> On any particular issue . . ., one incumbent LEC may have an incentive to cooperate with its competitors, contrary to the interests of the other LECs . . . . If two major incumbent LECs merge, however, this incentive may be reduced. To the post-merger incumbent LEC, cooperation in one area may have untoward consequences in another and cooperation may be against the firm's overall interests. [9/]

The Commission indicated that "[t]his may result in the post-merger LEC cooperating less than the pre-merger incumbent LECs would have in enabling competition to grow."[10/] The Commission did not disapprove the BA-NYNEX merger on that basis, but noted that the matter was a close call and that further mergers might raise serious competitive concerns.[11/]

The danger of reducing incentives to cooperate with market-opening measures is particularly acute in this proposed merger. At present, BA is seeking Section 271 approval for entry into the long-distance market in New York State, and presumably will do so in other States if its application for New York State is approved. Thus BA has at least some incentive to agree to market-opening measures. By contrast, GTE is already in the long-distance market. As a consequence, GTE has taken an extremely recalcitrant attitude toward competition.[12/] GTE's "scorched-earth" tactics have been very successful in keeping significant competition out of its service areas. If this merger is completed, the merged company will have to consider whether the possible benefits from agreement

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[9/] *Applications of NYNEX Corporation, Transferor and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, 12 FCC Rcd 19985 (1997) (" *Bell Atlantic/NYNEX Merger Order*"), ¶ 154.

[10/] *Id.*

[11/] *Id.* at ¶ 156.

[12/] The difference between GTE and the RBOCs became apparent soon after the Act was passed. Ameritech's CEO was quoted as saying: "The big difference between us and them [GTE] is they're already in long distance. What's their incentive to cooperate?" "Holding the Line on Phone Rivalry, GTE Keeps Potential Competitors, Regulators' Price Guidelines at Bay," *Washington Post*, October 23, 1996, at C12.

to market-opening measures that might have been persuasive for BA might be offset by the "adverse" precedent set in terms of opening up the market in GTE service areas. With control of over one-third of the nation's access lines at stake, the merged company may well conclude that the benefits of cooperation in terms of Section 271 approval are not worth the cost in terms of losing its control over access lines. In short, the merger will give the merged company a huge and immensely valuable monopoly, which it will have every incentive to defend with all the considerable means at its disposal.

B. Experience shows that BA and GTE have abused their monopoly positions to prevent their competitors from entering local markets.

In reviewing the proposed BA/GTE merger, the Commission's primary focus should be on ILECs' failure to meaningfully implement the Telecommunications Act of 1996 to open local exchange markets to competition. While other telecommunications markets are becoming competitive, the local market has remained stubbornly resistant to competitive reform – and this is the market that is of most concern to the average consumer.

With the possible reduction in the number of significant incumbent LECs from six to four – with two companies controlling over two-thirds of all access lines nationwide – will increase the incentive of the merged companies to further resist market-opening measures and to maintain the present geographical division of local markets. The likelihood that these enhanced incentives will prevail is enhanced by BA's and GTE's past record of using their monopoly position in their current regions to resist the market-opening measures required by the Act. Experience shows that BA and GTE have a management philosophy dedicated to the continuing viability of the monopoly model of local telephone service. These companies' management philosophy makes it particularly likely

that a merged company will not only continue to pursue anti-competitive aims but dig in deeper to preserve their considerable monopoly positions in their markets.

1. BayRing has experienced significant BA delays entering the New Hampshire local exchange market, as well as repeated service-affecting outages.

In the time that BayRing has attempted to implement its interconnection agreement with BA, BayRing has faced intolerable provisioning delays with respect to trunks and pole attachment and underground conduit preparation, and protracted service-affecting outages. As a result, BA literally placed BayRing in the position where it had to turn away customers, despite the fact that it had a fully operational switch which it was authorized to use. As described in the attached Declaration of BayRing Chief Operating Officer Richard S. Szilagyi, BA is not adequately provisioning facilities to BayRing. Despite the fact that BayRing submitted accurate trunk forecasts to BA on February 6, 1998, and submitted access service requests for those trunks, BA informed BayRing on July 23, 1998 that there were no interconnection trunking facilities available to connect to BA's Manchester tandem. Indeed, BA informed BayRing at that late date that it would have to change its network architecture and connect to BA's Dover tandem, for which no facilities were allegedly then available. As a result, Mr. Szilagyi told the Commission that "BayRing sits with a fully operational switch and group of employees that are unable to provide service. BayRing is in fact currently turning away customers." Only after the New Hampshire Commission's Staff intervened on virtually a daily basis in mid-to-late August 1998 did BA finally complete trunk provisioning to BayRing. Such intensive and, one would hope, extraordinary BayRing effort to follow up with BA to get its orders completed drains BayRing's resources. Similarly, it should not be necessary for Commission Staff to be so

intimately involved in overseeing BA's provisioning efforts, yet to date the New Hampshire Commission Staff's involvement has been indispensable.

As further described in Mr. Szilagyi's Declaration, BA's provisioning delay should not have occurred at all. BA informed BayRing in July that BA had insufficient capacity to the digital interface at its Manchester tandem to accommodate BayRing. Ultimately, BA connected BayRing's 21 T-1 lines to an additional digital interface BA provisioned to the Manchester tandem at the end of August. The T-1 lines were installed with no routing diversity whatsoever. Although BA claimed its Manchester tandem could not accommodate BayRing in July, since BayRing gained access to the tandem through a new digital interface in August, not a single additional trunk – either BA's or any other New Hampshire LEC's – has been connected to this interface. Apparently, the allegedly overburdened Manchester tandem has adequately handled all other trunking requests in the state by all carriers since that time. Nevertheless, BayRing's trunking request was delayed and installed without routing diversity.

BA's failure to provide BayRing with diverse routing has now twice paralyzed BayRing's operations. Mr. Szilagyi's Declaration describes how BayRing suffered an outage of 21 T-1 lines for approximately 90 minutes on October 23 because of a problem with BA facilities. The same 21 T-1 lines were out again on October 27 for five-and-a-half hours due to an obviously inadequate cable splice which downed a BA DS3 cable. BA's policy is to restore its own DS3 lines within 30 minutes. This particular DS3 was down over five hours, during which time BayRing's access to the public switched network was paralyzed. While routing diversity might not have totally avoided either or both of these outages, it would certainly have avoided the incapacitating nature of the outages.

BA's delay also extends to preparing poles for BayRing attachments and in preparing underground conduit. As shown in Mr. Szilagyi's Declaration, BayRing submitted its first pole attachment applications to BA on October 31, 1997. It was not until April 1, 1998 that BA completed minor work on the poles it ultimately determined required adjustment so that BayRing could attach. Other BayRing pole attachment and underground conduit applications were similarly delayed by as much as nine months. Clearly, BA is neglecting these applications and the delay is seriously affecting BayRing's ability to serve customers and foster local competition for New Hampshire.

These BayRing experiences provide a real-world example of the incentives upon which BA acts to stymie its competition. It is disingenuous to believe that BA will act in a more competitive manner if it merges with GTE. Indeed, GTE's record of compliance with the Act is worse still.

2. BayRing is aware that GTE has pursued a coordinated national strategy to thwart local competition.

The proposed merger is also anticompetitive and contrary to the public interest because it will vastly increase the size and economic power of GTE -- a company with a long history of resisting the market-opening measures now required by federal and state law in the local exchange market. Unlike the Bell companies -- which are at least subject to the restraint that they cannot enter the long-distance market until they have complied with the "competitive checklist" of Section 271 of the Telecommunications Act of 1996 ("1996 Act"), 47 U.S.C. § 271(c)(2)(B) -- GTE is presently subject to no such restraint and, as a consequence, has felt little inhibition about engaging in delaying and obstructionist tactics to thwart implementation of the federal and state market-opening requirements. Since the Act became law nearly three years ago, GTE's coordinated national strategy

of delay and intransigence has stifled development of local competition. Indeed, GTE's tactics have served to close GTE's markets in many states, to any substantial local competition, whether by resale or by use of unbundled network elements purchased from GTE.

GTE's success in closing its markets to CLECs is starkly reflected in data it recently submitted to the FCC regarding its provisioning of resold lines and unbundled network elements to CLECs. In its response to the Second Common Carrier Bureau Survey on the State of Local Competition, GTE reported the total of local lines it has provided to other carriers and the total lines it has in service, as of June 30, 1998. The number of total local lines GTE provided other carriers (Total Service Resale and unbundled network element ("UNE")), as a percentage of its total lines in service, is: California - 0.9%; Florida - 1.7%; Hawaii - .02%; Illinois - .005%; Indiana - .0007%; Kentucky - 0.2%; Michigan - 0%; North Carolina - 0.2%; Ohio - .004%; Oregon - .03%; Pennsylvania - .01%; Texas - 1.1%; Virginia - .02%; Washington - .02%; Wisconsin - .06%. Of the total lines GTE provided other carriers, slightly under1% were UNEs.[13/] GTE's data reflect a truly microscopic level of competition.[14/]

If GTE is permitted to merge with BA, thereby more than doubling in size and power, its ability and incentive to thwart competitive entry will be heightened, to the detriment of competition

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13/ http://www.fcc.gov/ccb/local-competition/survey/responses.

14/ The comparable figures for BA, while also disturbingly low, are an order of magnitude higher than GTE's figures. The number of total local lines BA provided other carriers (Total Service Resale and UNE), as a percentage of its total lines in service, is: Washington, D.C. - 0.75%; Delaware - 1.4%; Massachusetts - 2%; Maryland - 0.4%; Maine - 0.3%; New Hampshire - 1.1%; New Jersey - 0.4%; New York - 2%; Pennsylvania - 1.4%; Rhode Island - 0.8%; Virginia - 0.3%; Vermont - 0.2%; West Virginia - 0%. Of the total lines BA provided other carriers, 12.3% were UNEs. *Id.*

and the consuming public. As shown below, GTE's strategy to frustrate competitive entry has been based upon two basic principles: GTE makes it as costly and burdensome as possible for CLECs to enter its territory, then attempts to ensure that the terms and conditions under which CLECs can do business in its territory are as disadvantageous to CLECs as possible. The data set forth above attest eloquently to the success of this GTE strategy.

a. GTE frustrates the Act's negotiation process.

All CLECs seeking to provide competitive local exchange services in GTE's service territory must begin with interconnection negotiations with GTE. While the Act sets out a swift negotiation schedule for achieving such agreements, GTE has perfected methods to make these negotiations difficult, protracted, and costly. GTE's negotiating position regularly ignores and conflicts with state arbitration rulings that have already been issued. As a result, each successive CLEC is forced to negotiate issues which have already been dispositively resolved at the state commission level, needlessly wasting the CLEC's resources and detracting from any legitimate issues the parties may need to resolve within the 160 day negotiating period provided by Section 252 of the 1996 Act.

GTE has employed obfuscation tactics in various negotiations by changing its positions once negotiations are substantially under way or even after an arbitration proceeding has commenced. BayRing is aware that other CLECs that have negotiated with GTE on a multi-state basis have discovered that after they have negotiated or arbitrated interconnection agreements with GTE for one state, when they move on to negotiate an agreement with GTE for another state, GTE has insisted upon starting negotiations from scratch, rather than carrying forward terms and conditions already agreed to by the parties in other states.

In another instance, GTE went so far as to raise at arbitration new contract issues it had never articulated in 160 days of negotiations with a CLEC.[15] GTE's backtracking in negotiations is in dereliction of its Section 251(c)(1) duty to negotiate in good faith. The effect of this conduct upon CLECs is to inject unnecessary costs and delays into the interconnection process. This in turn harms consumers by delaying local competition.

b. GTE abuses the Act's arbitration process.

Once an arbitration proceeds, GTE again places serious obstacles in the way of resolving differences with CLECs. Specifically, GTE insists upon numerous contract provisions that range from anticompetitive to patently frivolous. At arbitration, GTE has asserted, over CLEC protest, that it needed contract provisions that would give it the ability to:

- Review CLEC publicity in advance when the CLEC's service is provided under the agreement; [16]
- Shift the costs of environmental compliance and clean up to CLECs without any showing that they created the environmental hazard; [17]

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[15] *In the Matter of KMC Telecom Inc. Petition for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms and Conditions with GTE North Incorporated,* Cause No. 40832-INT-01 (Ind. U.R.C. Feb. 11, 1998).

[16] Verified Petition of US Xchange of Indiana, LLC For Arbitration of Interconnection Rates, Terms, and Conditions, *In the Matter of US Xchange of Indiana, LLC Petition for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms, and Conditions with GTE North Incorporated and Contel of the South, Inc. d/b/a GTE Systems of the South,* Cause No. 41034-INT-01, at 15-16 (Ind. U.R.C. Oct. 24, 1997) ("*USX Indiana Petition*").

[17] *In the Matter of US Xchange of Indiana, LLC Petition for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms, and Conditions with GTE North Incorporated and Contel of the South, Inc. d/b/a GTE Systems of the South,* Cause No. 41034-INT-01, at 6-10 (Ind. U.R.C.
(continued...)

- Unilaterally terminate the interconnection agreement when GTE sells an exchange to another carrier, leaving the CLEC with no means of serving its customers;[18/]
- Place onerous restrictions on resale of retail services, substantially impairing a CLEC's ability to resell a complete range of retail GTE services;[19/]
- Escape liability for the gross negligence of its employees.[20/]

Time and again, GTE forces CLECs to litigate the same issues, sometimes more than once in a single state. GTE's actions erect barriers to competition that divert CLEC resources from serving customers to fighting regulatory battles with GTE. Moreover, even after it completes an arbitration, GTE somehow manages to avoid signing an interconnection agreement. This is

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[17/](...continued)
Feb. 11, 1998) ("*USX Indiana Order*"); *BRE Communications, LLC Petition for Arbitration of Interconnection Terms, Conditions and Prices from GTE North Incorporated and Contel of the South, Inc. d/b/a GTE Systems of Michigan*, Case No. U-11551, at 24-26 (Mich. P.S.C. Dec. 14, 1997).

[18/] Petition of GST Lightwave (WA), Inc. for Arbitration of Interconnection Rates, Terms and Conditions, *In the Matter of the Petition of GST Lightwave (WA), Inc. for Arbitration of an Interconnection Agreement Pursuant to 47 U.S.C. Section 252 with GTE Northwest, Inc.*, at 34-36 (Wash. Utils. & Trans. Comm'n Apr. 15, 1997).

[19/] Arbitration Award, *In the Matter of the Petition of Sprint Communications Company, L.P. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with GTE North Incorporated,* Case No. 96-1021-TP-ARB (Ohio P.U.C. Jan. 30, 1997) at 13; Order, *In the Matter of US Xchange of Indiana, LLC Petition for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms, and Conditions with GTE North Incorporated and Contel of the South, Inc. d/b/a GTE Systems of the South*, Cause No. 41034-INT-01, at 5-6 (Ind. U.R.C., Feb. 11, 1998); Order, *Petition of AT&T Communications of Indiana, Inc. Requesting Arbitration of Interconnection Terms, Conditions and Prices from GTE North Incorporated and Contel of the South, Inc. d/b/a GTE Systems of Indiana, Inc.*, Cause No. 40571-INT-02, at 11-15 (*Id.* U.R.C., Dec. 12, 1996).

[20/] *USX Indiana Petition*, at 13-14.

particularly true for arbitrations conducted between AT&T and GTE, many of which resulted in no agreement at all after the arbitration decision was issued.[21/]

c. BA unnecessarily complicates the Section 252(i) process.

Section 252(i) of the Act provides that CLECs may adopt other approved interconnection agreements. Adopting another interconnection agreement should be a wholly administrative task in which requisite filings are made to state commissions; no negotiation should be necessary. BA has turned the exercise of Section 252(i) rights into a protracted process, however, riddled with unnecessary negotiations and interminable administrative delays.

After receiving a formal request to opt into a specific agreement, BA returns a draft opt-in document. BayRing is aware that BA has insisted in this document that carriers that opt in must respect any subsequent modifications that the primary CLEC and the incumbent LEC ("ILEC") negotiate. This position does not withstand scrutiny. As an example, the initial CLEC could determine that it will pursue only a resale strategy and not purchase any unbundled elements, and modify its agreement by deleting provisions for purchase of unbundled elements in exchange for gains in other areas of the agreement. While this might benefit the primary CLEC, the secondary CLEC would be locked into an agreement that was desirable when it opted in, but has been changed by other parties and has become unsatisfactory. Clearly, ILECs are not entitled to renegotiate other

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[21/] *See, e.g., In the Matter of the Petition of AT&T Communications of Indiana, Inc. Requesting Arbitration of Interconnection Terms, Conditions and Prices from GTE North Incorporated and Conel of the South, Inc., d/b/a GTE Systems of Indiana, Inc. in their Respective Service Areas, pursuant to § 252(i) of Communications Act of 1934, As Amended by the Telecommunications Act of 1996,* Cause No. 40571-INT-02 (Ind. U.R.C. Dec. 12, 1996); AT&T Communications of Illinois, Inc. Petition for Arbitration of Interconnection Terms, Conditions and prices from GTE North Incorporated, Docket No. 96-AB-005 (Ill. Comm. Comm'n Dec. 3, 1996).

carriers' contracts without their participation. Yet BA insists on negotiating this provision every time a carrier opts into the agreement.

BA has used the opt in process to attempt to exact concessions from CLECs regarding reciprocal compensation. For example, in September 1998, ChoiceOne Communications, a New York CLEC, requested to adopt one of BA's New York interconnection agreements. BA returned an adoption agreement that would have denied ChoiceOne reciprocal compensation for terminating traffic to Internet Service Providers, contrary both to the language of the primary interconnection agreement and to a controlling New York Public Service Commission decision on the subject. BA later relented, but only after ChoiceOne had to incur the expense of bringing the matter to the New York Commission's attention.[22/] Again, the CLEC lost time and resources disputing a matter already decided.

III. THE PROPOSED MERGER IS NOT LIKELY TO ENHANCE LOCAL COMPETITION

BA and GTE argue that the proposed merger will benefit local competition because the merged company will undertake an ambitious campaign to provide facilities-based local competition against other ILECs. According to BA and GTE, they could not take on other ILECs alone. The claim is not credible.

[22/] *See* September 28, 1998 and October 26, 1998 letters from E. Branfman, counsel for ChoiceOne Communications, to D. Renner, Acting Secretary, New York P.S.C, Case No. 97-C-0271, attached as Exhibit 1.

GTE is already a huge company -- in 1997, it had revenues of $23.26 billion, operating income of $5.6 billion, and net income of $2.79 billion.[23] GTE is continuing to do well -- its operating income for the third quarter 1998 increased by 11%, and its net income by 8.7% over the third quarter 1997.[24] In its latest annual report, it boasts that it is not only "one of the world's largest telecommunications companies," but also that it is "a leading provider of integrated telecommunications services, providing "local service in 28 states and wireless service in 17 states, nationwide long-distance service and internetworking services ranging from dial-up Internet access for residential and small-business consumers to Web-based applications for Fortune 500 companies, and video service in selected markets."[25]

GTE already has all the financial clout it needs to compete against any other ILEC it chooses, with a broad range of products it needs to offer its customers a total package of services. There is simply no reason (other than obtaining a monopolistic advantage) why it needs to merge with BA before competing with other ILECs outside of GTE's current service areas. GTE's Chairman and CEO stated as much in the company's 1997 Annual Report of 1997:

> We're confident about GTE's ability to succeed in the competitive marketplace without entering into a major transaction or combination with another company. In other words, we can go it alone and win.[26]

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[23] GTE Annual Report 1997, Consolidated Financial Highlights.

[24] "GTE Reports 11% Consolidated Operating Income Growth and Double-Digit Cor EPS Growth in Third Quarter," Press Release, Oct. 19, 1998. http://www.gte.com/g/3Q98/summary.html (visited Oct. 21, 1998).

[25] GTE Corporation Annual Report 1997, "Introduction - About GTE," available at http://www.gte.com/g/annual1997/bigidea.html (visited Oct. 21, 1998).

[26] *Id.*, "Chairman's Message" (emphasis in original).

Before this Commission, BA and GTE state that after the merger the merged company would enter local markets in MSAs served by other LECs by selling to corporate offices of companies with headquarters in BA's region that already use BA's service:

> Many of the Nation's largest business customers are headquartered in the Bell Atlantic region and have subsidiaries or affiliates outside of Bell Atlantic's franchise. The merged entity will be able to utilize Bell Atlantic's existing relationships with these customers to sell through to their subsidiaries or affiliates in selected out-of-franchise locations.[27/]

This is a proposal for the merged company to utilize its monopoly position in the MSAs presently controlled by BA to leverage GTE's entry into other MSAs. BA currently serves the headquarters of 175 of the Fortune 500 companies.[28/] Smaller CLECs seeking to obtain the business of these companies do not have the advantage of an established relationship -- developed as the fruit of a monopoly franchise -- with the customers' headquarters. GTE seeks through merger to obtain the advantage, and thereby to use BA's monopoly position in its region to obtain a competitive advantage.

The classic Supreme Court decision on monopoly leveraging explained how a monopoly in one area may be used to leverage the monopolist's entry into another area in which there are competitors:

> A man with a monopoly of theaters in any one town commands the entrance for all films in that area. If he uses that strategic position to acquire exclusive privileges in a town where he has competitors, he is employing his monopoly power as a trade weapon against his

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[27/] Bell Atlantic/GTE FCC Merger Approval Application, Affidavit of Jeffrey C. Kissell, ¶ 7.

[28/] "Bell Atlantic and GTE Agree to Merge," Press Release July 28, 1998, http://www.ba.com/nr/1998/Jul/19980728001.html.

> competitors. It may be a feeble, ineffective weapon where he has only one closed or monopoly town. But as those towns increase in number throughout a region, his monopoly power in them may be used with crushing effect on competitors in other places.[29/]

By acquiring through merger the headquarters accounts of 175 of the Fortune 500 -- all of them originally acquired as part of BA's monopoly control of New York City and other large East Coast MSAs -- GTE will have acquired a "trade weapon" that no CLEC has and that it proposes to use to enter local markets. That is the essence of monopoly leveraging, and is another reason why this merger is anticompetitive.

IV. THE PROPOSED MERGER IS NOT LIKELY TO ENHANCE LONG DISTANCE COMPETITION

GTE and BA claim that the proposed merger will enhance competition in the long distance telecommunications market, enabling the merged company to construct and operate a national long distance network. GTE is apparently arguing that it needs the additional financial resources and additional customers supplied by BA before undertaking to construct its own national long-distance network. This argument has at least three serious flaws.

First, the Commission has already rejected GTE's argument that effective long-distance competition is confined to the "Big Three." Instead, the Commission pointed out, "the supply of transmission capacity is expanding significantly with the construction of four new national fiber-optic networks by Qwest, IXC, Williams and Level 3."[30/] The Commission concluded that the new capacity of these four additional networks "will likely enable these firms, those that buy fiber

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29/ *United States v. Griffith*, 334 U.S. 100, 107 (1948).

30/ *MCIWorldCom Merger Order* at ¶ 43.

capacity, and resellers to constrain any exercise of market power by any market participant or group of market participants."[31/] With these four networks, plus the three already in place, it is unclear why an eighth network built by GTE is necessary to bring competition to the long-distance market. As the Commission concluded, "the coverage of the new networks is sufficient to provide competitive national long distance service."[32/]

Second, it is unclear why, if GTE believes the market will support an eighth network, it does not proceed to build it. GTE is a vastly larger company than Qwest, IXC, Williams or Level 3 -- companies that, as described by the Commission, are already building national fiber-optic networks.[33/] Nor did these companies have the ready-made supply of Fortune 500 customers that GTE is seeking to have handed to it through a merger, rather than competing for them. In short, the merger is simply unnecessary for GTE to build its own national long-distance network, if it believes the market justifies it.

Finally, BA has not yet obtained authority under Section 271 of the Act to provide long-distance service in any of the states in its region. Thus BA's large corporate customers, which GTE is apparently seeking to obtain as a base for construction of another long-distance network, are not yet available to GTE. For all these reasons, there is no merit to the argument that approval of the proposed merger will enhance long-distance competition.

31/ *Id.*

32/ *Id.* at ¶ 54.

33/ GTE's revenue for 3Q 1998 was $1.7 billion. Qwest's was $880 million; IXC's $185 million, and Level 3's $106 million. See http://www.gte.com/g/3Q98/table1.html (visited October 21, 1998); http://www.qwest.net (visited November 2, 1998); http://www.level3.com (visited November 2, 1998).

V. IF THE MERGER IS APPROVED, IT SHOULD BE SUBJECT TO CONDITIONS

If this merger is approved, improved conditions are needed to ensure that the merged company will truly open its markets to competitive entry, and swift sanctions are essential to address any failure to comply with these market-opening conditions.

A. Conditions

If the Commission is to approve the merger, the BA-NYNEX merger conditions should serve as a floor to address competitive concerns that will arise from the creation of the combined BA/GTE company. Further measures are needed to ensure that competition takes root in the new company's service territories. Specifically, the Commission should address the following concerns in structuring additional conditions as part of a merger approval:

1. ***Stranded Cost Recovery:*** Since the Act was signed, GTE has consistently taken the position that it should be entitled to recover all of its historical costs from competitors through UNE prices, notwithstanding the forward-looking cost standard contained in section 252(d) of the Act. From Missouri to Hawaii to Indiana to Minnesota to North Carolina,[34/] GTE has repeatedly argued that the 1996 Act has caused it harm, such that it is forced to sell access to its network elements at rates that are somehow less than compensatory. Of course, such claims are flatly inconsistent with the optimistic tone taken by GTE in its 1996 Annual Report, when its Chairman trumpeted passage

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[34/] Case No. TO-97-124 (Mo. P.S.C.); Docket 7702 (Hawaii P.U.C.); Cause No. 40618 (Indiana U.R.C.); Docket No. P-442, 407/M-96-939 (Minn. P.U.C.); Docket No. P-100, Sub133d (North Carolina U.C.).

of the Act as "a triple-win situation. It's good for the country. It's good for consumers. And it's *great* for GTE."[35/]

The Act expressly prohibits the kind of stranded cost recovery that GTE has proposed in state after state. Section 252(d) of the Act specifically limits the costs that ILECs will be allowed to recover to those costs "determined without reference to a rate-of-return or other rate-based proceeding."[36/] While the statute clearly disallows the stranded cost recovery that GTE repeatedly proposes, and no state commission to date has approved such a recovery mechanism in the telecommunications context, GTE continues to offer up this proposal in state after state in an effort to inflate its prices and foist historical costs onto competitors. Indeed, Missouri, Indiana, and Minnesota have already issued rulings denying GTE's efforts to raise the costs that new entrants will pay to access its network and compete for customers.[37/]

It is immaterial that GTE tends to propose such recovery through a stand-alone surcharge. Quite simply, GTE should not be permitted to smuggle in the back door what the Act prohibits through the front door, and it should not be permitted to relitigate this losing issue in state after state

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35/ 1996 GTE Annual Report, Chairman's Message (emphasis in original).

36/ 47 U.S.C. § 252(d)(1)(A)(i) (1996).

37/ *Sprint Communications Company*, L.P., Case No. TO-97-124, 176 P.U.R. 4th 285, 289 (Mo. P.S.C. Jan. 20, 1997); *Commission Investigation and Generic Proceeding on GTE's Rates for Interconnection Services, Unbundled Elements, Transport and Termination Under the Telecommunications Act of 1996*, Cause No. 40618 (I.U.R.C. May 7, 1998); *AT&T Communications of the Midwest, Inc.*, Docket No. P-442, 407/M-96-939, 1997 WL 178602, at *12 (Minn. P.U.C. Mar. 14, 1997). The Hawaii Public Utilities Commission has issued a proposed decision rejecting GTE's stranded cost recovery schemes. *Public Utilities Commission Instituting a Proceeding on Communications, Including an Investigation of the Communications Infrastructure of the State of Hawaii*, Docket No. 7702, Proposed Decision and Order (Haw. P.U.C. Nov. 13, 1998) ("*Hawaii Decision*"), at 107. A decision in North Carolina is pending.

so that its competitors are forced to spend time and resources overcoming this proposed barrier to entry. Consistent with its own interpretation of the Act and the reasonable opinions of all states that have thus far considered GTE's efforts to recover stranded costs, this Commission should ensure that GTE cannot yet again attempt to impose the exaggerated, embedded costs of its network operations on its competitors.

The need for such a forward-looking pricing condition is all the more apparent when one considers that GTE also has tried to protect its historical revenue streams by proposing in several states that competitors pay a so-called "universal service" surcharge directly to GTE.[38/] Again, this surcharge has no relationship whatsoever to the pricing standards in the Act: GTE would have its competitors pay this extra amount to ensure that it does not lose any "support" when those competitors take certain customers off of GTE's network. Nor does this proposed surcharge have any relation to universal service principles under the Act, as a mechanism that pays directly to the incumbent carrier for alleged losses of implicit subsidies can hardly be considered competitively neutral.[39/] In fact, even though the fundamental principle of universal service is to make telecommunications affordable for consumers,[40/] GTE's proposed surcharges have been aimed solely at making the provision of telecommunications affordable *for GTE*. Only by making the establishment of forward-looking UNE prices a condition of merger approval can this Commission

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38/ Docket 7702 (Hawaii P.U.C.); Cause No. 40618 (Ind. U.R.C.); Docket No. P-100, Sub133d (North Carolina U.C.). Decisions on the proposed interim surcharge are pending in the Hawaii and North Carolina proceedings, while consideration of this issue has been transferred to a general universal service docket by the Indiana Commission.

39/ 47 U.S.C. § 254(b)(4) (1996).

40/ *Id.* at § 251(b)(1).

adequately ensure that make-whole schemes such as the so-called "universal service" surcharge that GTE has proposed in other states will not serve to deter competitive entry into GTE's local markets. The Commission should require as a condition of merger approval that GTE charge forward-looking prices – and only forward-looking prices – to new entrants seeking to compete with GTE.

2. ***Resale Restrictions and Pricing:*** The Commission should require the new BA/GTE to commit to eliminate unreasonable restrictions on resale and to provide greater wholesale discounts on resold services in accordance with the avoidable cost standard set forth in the *Local Competition Order*. For example, BA has taken the position that whenever a customer under a contract service arrangement ("CSA") wants to switch the contracted service to a reseller, the customer may not avail itself of this competitive service option. While BA has already litigated and lost on this issue in several states,[41/] it is still seeking to enforce this policy in other jurisdictions, and to impose termination penalties upon customers even if it will let them switch their contract services to a reseller. These unreasonable restrictions have no basis in law and serve only to deter end users from availing themselves of the competitive opportunities envisioned by the Act.

3. ***Availability of Arbitrated Rates:*** In a number of states, GTE is declining to make available to other carriers those UNE prices and resold discounts that are the product of its arbitrations with AT&T. Because AT&T and GTE have not executed final interconnection agreements in many states, GTE prevents other CLECs from purchasing UNEs and resold services

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41/ *See, e.g., Complaint and Request of CTC Communications, Inc. for emergency relief against New York Telephone d/b/a/ Bell Atlantic-New York for violation of sections 251(c)(4) and 252 of the Communications Act of 1934, as amended, section 91 of the N.Y. Pub. Serv. Law, and Resale Tariff PSC No. 915*, Case 98-C-0426, Order Granting Petition (N.Y.P.S.C. Sept. 14, 1998); *CTC Communications Corporation Petition for Enforcement of Resale Agreement and to Permit Assignment of Retail Contracts*, DR 98-061, Order No. 23,040 (N.H.P.U.C. Oct. 7, 1998).

from GTE at the arbitrated rates. In essence, GTE would require each CLEC to relitigate the same cost studies to obtain these rates.[42/] Quite simply, this is a barrier to entry that GTE has erected out of legal fiction. Requiring GTE to make its arbitrated rates available to all competitors will dramatically reduce the legal costs associated with competitive entry and spare state commissions the administrative burden of repetitive arbitration proceedings.

4. ***Special Construction Charges:*** The Commission should require the new BA/GTE to refrain from charging special construction charges to CLECs – or to the CLECs' end users – when such charges would not be charged to the super ILEC's own end user customers. Moreover, to the extent that such charges are imposed upon CLECs or their end users, the super-ILEC should be required to provide justification for imposing these charges and forward-looking TELRIC analyses supporting their imposition if challenged.

5. ***IntraLATA Toll Dialing Parity:*** The Commission should require the new BA/GTE to provide 1+ intraLATA dialing parity in all states throughout its combined region by no later than February 8, 1999, if not otherwise required to implement dialing parity sooner. In state after state, BA has litigated and lost on the position that it is not required to implement toll dialing parity by this date under the Act. While proceedings to consider this matter are pending in several states, clear direction from this Commission would remove any uncertainty in all jurisdictions going forward and save CLECs further costs in prosecuting such claims.

[42/] *See, e .g., US Xchange of Indiana, L.L.C. Petition for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms, and Conditions With GTE North Incorporated and Contel of the South, Inc. d/b/a GTE Systems of the South*, Cause No. 41034-INT-01 (Ind.U.R.C. Feb. 11, 1998) (adopting AT&T-GTE arbitrated rates on an interim basis after GTE attempted to compel US Xchange to take higher rates).

6. ***Interim Number Portability:*** Despite the fact that this Commission has ruled that interim number portability ("INP") costs should be recovered from competitors in a competitively neutral manner,[43/] GTE has proposed in state after state that it should be permitted to recover the full incremental cost of providing INP from its competitors.[44/] The Commission specifically rejected such a proposal in its *Number Portability Order*, and instead set forth a number of alternative mechanisms for states to consider in deciding how INP costs should be recovered. Rather than making competitors fight this issue all over again with GTE in yet another jurisdiction, this Commission should compel the new BA/GTE, as a condition of merger approval, to establish a competitively neutral INP cost recovery mechanism that is consistent with those set forth in the *Number Portability Order.*

7. ***Winback Programs:*** The Commission should issue a clear directive regarding the use of winback programs by BA/GTE, and the sharing of information between its retail and wholesale operations. To stop this anticompetitive, backdoor sharing of information, the Commission should establish that the ILEC's winning back of a customer prior to switching over to the competitor's retail service is *prima facie* evidence of a violation of Section 251 of the Act. Moreover, to ensure that BA/GTE's incentives to engage in such conduct are minimized, the Commission might consider establishing a window of time – perhaps 30 days – during which the super ILEC would be prohibited from contacting any customer that has switched to a competitor's service.

43/ *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order (rel. July 2, 1996), at ¶ 138 ("*Number Portability Order*").

44/ Docket 7702 (Hawaii P.U.C.); Cause No. 40618 (Indiana U.R.C.); Docket No. P-100, Sub133d (North Carolina U.C.).

8. ***Combinations of UNEs:*** The Commission should require the new BA/GTE to provide technically feasible combinations of network elements at forward-looking cost-based rates. The refusal to provide network element combinations – or alternatively, the placement of limitations on the use of UNE combinations – has no basis in technology or in economics, and is merely a legal hurdle used to inhibit competitive entry.

9. ***Operations Support Systems:*** The Commission should require the new BA/GTE to commit to immediate development of operations support systems ("OSS") that will enable CLECs and other new entrants to provide service to their end users in parity with the service that the new ILEC provides to its end users. Most significantly, GTE and BA should not be permitted to recover the costs of establishing these OSS on an other than a competitively neutral basis. BA has proposed in many, if not all, of its states, that the entire cost of establishing OSS be borne by CLECs.[45/] Still worse, its proposed cost recovery mechanism recovers a portion of these costs on the basis that each CLEC pays an equal share, whether it serves 50 customers in one state or 500,000 customers in all 13 BA states. BA's approach creates an enormous entry barrier for all CLECs, particularly smaller CLECs that cannot spread these costs over large numbers of customers.[46/]

In its Opinion and Order in Phase 2 of Case No. 95-C-0657, the New York Public Service Commission ("N.Y.P.S.C.") stated that it was "unpersuaded" by New York Telephone's ("NYT's") suggestion that CLECs are the "sole causers" of the developmental costs involved in modifying

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[45/] *See, e.g.,* NH SGAT case **cite.**

[46/] While GTE has not, to our knowledge, formally proposed such a cost recovery scheme to state commissions, Freedom Ring is aware that in its interconnection agreements, GTE routinely includes a clause obligating the CLEC to pay GTE's costs in establishing OSS.

NYT's OSS systems to allow CLECs the level of access required by the 1996 Act. In fact, the N.Y.P.S.C. considered that, since "the law would have required these steps even if no CLEC were to use OSS," prudent ILECs would seek to improve these systems in order to make themselves more efficient wholesale providers, "whether or not cost recovery would be guaranteed under traditional regulatory notions."

OSS should be viewed as part of the cost of establishing a competitive marketplace, a cost that benefits not only CLECs and CLECs' customers, but also ILECs and their customers, and which should be recovered on a per line basis from all LECs, including BA and GTE. The Commission should direct that BA and GTE recover all OSS establishment costs accordingly.

10. ***Collocation Arrangements:*** The Commission should direct the new BA/GTE to provide more flexible collocation arrangements if the merger is approved. For example, the Commission should require the super ILEC to: (i) offer carriers access to less than 100 square feet of collocation space; (ii) allow carriers to use "cageless collocation;" and (iii) allow carriers to collocate equipment that is necessary for interconnection and the use of unbundled network elements, even if that equipment could also be used for other purposes.

11. ***Non-Recurring Charges:*** BA/GTE should be required to impose only reasonable, cost-based non-recurring charges ("NRCs") for services provided to competitors. In the resale context, where there is a retail analogue to the charge that would be imposed upon the reseller, these NRCs should be developed on the basis of an avoided cost analysis that applies a wholesale discount to the retail NRC. GTE has refused to do this. In the context of UNEs and where a retail analogue does not exist for a resale NRC (*e.g.*, a service migration charge), the NRCs should be developed using TELRIC principles.

12. ***Resale of Voicemail:*** If the merger is to be approved, BA/GTE should be required to make its voicemail services ("VMS") available for resale at an avoided cost discount, or at the very least, at the retail price for those services. Technical limitations and economic barriers prevent resellers from offering VMS in the same manner and at the same level of quality that the ILEC offers to its own customers. The inability to provide VMS places resellers at a competitive disadvantage, as they cannot offer an entire segment of the ILEC's customer base the VMS they have come to expect from the incumbent. Requiring BA/GTE to provide VMS for resale would eliminate the tying arrangement between the ILEC's local exchange service and its VMS, and provide resellers with the opportunity to compete for each and every customer in the ILEC's embedded customer base.

13. ***Performance Reports:*** The Commission should also require the combined BA/GTE to submit *monthly* performance reports, in lieu of the quarterly reports required in the context of the BA-NYNEX merger.[47/] Since BA is already compiling data on a monthly basis under the existing merger conditions, it should not be too much of an additional burden to publish those results on a monthly basis as well. By contrast, a span of even three months can make a substantial difference in deciding whether to enter a market or in attempting to withstand the continuing anticompetitive conduct of an incumbent – especially one like the proposed BA/GTE company, which would have a monopolistic level of market share and bottleneck control of essential facilities across such a large span of the nation.

47/ *Bell Atlantic/NYNEX Merger Order*, at Appendix C.1.d.

14. ***Performance Standards:*** Finally, the Commission should attach conditions to the merger compelling BA/GTE to satisfy certain levels of performance in providing interconnection services, UNEs, and resold services to competitors. For each reporting category imposed as part of Condition 12, the new super ILEC should be required to meet a certain threshold of performance (whether it be a set interval or a specific success rate) so that carriers can determine with certainty when BA/GTE is discriminating in the provision of service.

We realize that the Commission tentatively concluded in its OSS rulemaking that it would be "premature" to develop performance standards.[48/] There is no other means available, however, to ensure that BA/GTE will provide service in a nondiscriminatory manner. If the Commission believes there is not enough evidence on the record to establish sufficiently detailed performance standards, it could adopt interim performance standards that are based upon how BA/GTE provide service in the context of their retail operations. Specifically, the Commission could first direct BA/GTE to identify a level of performance that mirrors its own self-provisioning of service, and after several months of reports, the Commission could revisit this issue and adjust the standards as necessary. Alternatively, the Commission could utilize a "floating" standard of performance for each category, such that the standard for each month would be set by looking at BA/GTE's performance in running its retail operations during that month. In either case, these standards could be superseded once permanent performance benchmarks are established in the Commission's OSS proceeding.

48/ *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56, RM-9101, Notice of Proposed Rulemaking (rel. Apr. 17, 1998), at ¶125.

B. Sanctions

More detailed conditions and more stringent reporting requirements are only a means to an end in minimizing the new super ILEC's ability to discriminate against competitors. The larger question is whether CLECs will be able to do anything if they discover that the new BA/GTE is in fact engaging in discriminatory conduct or violating the merger conditions. Unfortunately, reliance upon the Commission's complaint procedures may not bring speedy resolution. Thus, the Commission should establish a system of reasonable yet strict financial sanctions for failure to adhere to the performance standards incorporated in the merger conditions. For example, if the combined BA/GTE's performance in any category in which it is required to report falls below the level of performance it provides for its own operations for two consecutive months, the Commission should assess a fine of $75,000 for each month thereafter that the substandard performance in that category continues. The proposed amount of this fine has a sound basis, as BA has previously entered into interconnection agreements that provide for such liquidated damages in cases of performance breaches.[49/]

Moreover, the Commission should create an entirely separate system of penalties to be imposed if BA/GTE violates any of the other, non-performance related merger conditions. For example, in instances in which the super ILEC fails to provide reports on a monthly basis or refuses to resell VMS to competitors, the Commission should impose a penalty of $500 per day for a continuing violation. As in the case of performance breaches, this amount also has a sound basis;

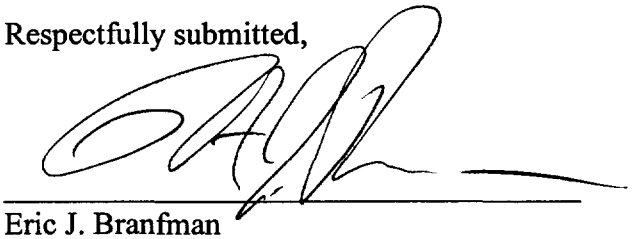
[49/] *See* Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996 Dated as of June 25, 1996 by and between New York Telephone Company and MFS Intelenet of New York, Inc., at §27.3 (providing for liquidated damages of $75,000 for each specified performance breach by New York Telephone).

47 U.S.C. § 502 allows the Commission to impose such a fine for each and every day that a person willingly and knowingly violates any Commission rule, regulation, restriction, or condition. Such sanctions will avoid the need for lengthy, time-consuming, and expensive litigation in each case when BA/GTE fails to satisfy a condition of the merger.

CONCLUSION

For the foregoing reasons, the Commission should reject the proposed transfer of control. If the Commission does approve the proposed transaction, it should be subject to conditions described above.

Respectfully submitted,



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September 28, 1998

BY FACSIMILE AND OVERNIGHT MAIL

Debra Renner, Acting Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 97-C-0271

Dear Secretary Renner:

On behalf of Choice One Communications Inc. ("Choice One"), I have enclosed 24 copies of this letter for filing in the above referenced proceeding. Please date-stamp and return the extra copy in the self-addressed envelope I have provided. Thank you in advance for your assistance in this matter.

Choice One is not a party to this proceeding, but believes that the following information will assist the Commission in its consideration of this matter. This letter is written in lieu of filing Comments in this proceeding. Choice One is a competitive local exchange carrier ("CLEC") currently in the process of adopting, pursuant to 47 U.S.C. § 252(i), the approved interconnection agreement between Bell Atlantic for the State of New York ("BA-NY") and ACC National Telecom Corp. ("ANTC") dated as of November 11, 1997. On September 4, 1998, Choice One informed BA-NY that it desired to opt into the ANTC/BA-NY Agreement pursuant to § 252(i). In response, on September 14, 1998, Stephen Hughes of BA-NY sent counsel for Choice One a draft agreement adopting and incorporating the ANTC/BA-NY agreement by reference ("Adoption Agreement"). Although the ANTC/BA-NY interconnection agreement does not exclude Internet-bound traffic from the definition of local traffic for purposes of reciprocal compensation, the Adoption Agreement furnished by BA-NY contained the following provision:

2.0 Clarifications

. . .

2.3 The Reciprocal Compensation provisions set forth in this Agreement do not apply to Internet-bound traffic because such traffic is not local traffic.

While Choice One has objected to this purported "clarification" which would completely change the agreement, BA-NY has not as of this writing modified its position. BA-NY's purported "clarification" stands in stark contrast to the March 19, 1998 Order of this Commission declaring

such traffic to be local in nature. Moreover, this language contradicts the appearance of compliance with the Commission's March 19th Order presented in the Joint Affidavit filed by BA-NY in this proceeding.[1] In Paragraph 76 of the Joint Affidavit, BA-NY represented that "[n]otwithstanding BA-NY's continued view that traffic to internet service providers should not be treated as local traffic eligible for reciprocal compensation, BA-NY currently pays reciprocal compensation to 14 wireline CLECs and 54 wireless carriers at rates set by the Commission for the termination of this and other traffic under the terms of its interconnection agreements and/or BA-NY's NY PSC Tariff No. 914." Certainly BA-NY may not choose to honor, for some carriers, the Commission's ruling that such traffic is local traffic eligible for reciprocal compensation but not for others, merely because it does not agree with the ruling. Unfortunately, it appears that this is precisely what BA-NY is doing. BA-NY's tactics are an anti-competitive attempt to delay the exercise by CLECs of their Section 252(i) rights, to evade the Commission's March 19th Order, and to generally retard competition. Such conduct should weigh heavily in the Commission's consideration as to whether BA-NY has shown that the public interest will be served by BA-NY being authorized to offer in-region interLATA service.

Very truly yours,

Eric J. Branfman

Counsel for Choice One Communications Inc.

cc: Andrew Kline, Esq. (by fax)
Honorable Eleanor Stein (by fax)
Honorable Jacqueline Brilling (by fax)
Honorable Judith Lee (by fax)
Mae Squier-Dow (by fax)
Stephen Hughes (by fax)
Eric N. Einhorn, Esq.
Attached Service List

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[1] *Joint Affidavit of Julie A. Canny, Karen Maguire, Patrick J. Stevens and Craig Soloff On Behalf Of Bell Atlantic - New York*, filed September 11, 1998, at ¶¶ 75-77.

CERTIFICATE OF SERVICE

I, Eric N. Einhorn, hereby certify that on this 28th day of September, 1998, I served a copy of the foregoing on the following parties by Federal Express.

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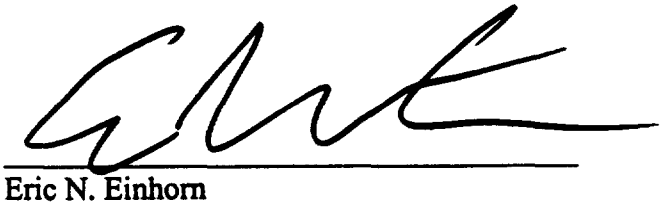

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October 26, 1998

BY OVERNIGHT MAIL

Debra Renner, Acting Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 97-C-0271

Dear Secretary Renner:

On behalf of Choice One Communications Inc. ("Choice One"), I have enclosed 24 copies of this letter for filing in the above referenced proceeding. Please date-stamp and return the extra copy in the self-addressed envelope I have provided. Thank you in advance for your assistance in this matter.

By letter dated September 28, 1998, I informed the Commission of Bell Atlantic - New York's ("BA-NY") attempt to avoid its obligations under both (1) the Commission's March 19, 1998 Order declaring Internet-bound traffic to be local in nature for purposes of reciprocal compensation and (2) 47 U.S.C. § 252(i). On September 4, 1998, Choice One requested that BA-NY enter into an interconnection agreement pursuant to 47 U.S.C. § 252(i) with Choice One providing the same rates, terms, and conditions as are contained in BA-NY's agreement with ACC National Telecom Corp. ("ANTC"). (A copy of Choice One's letter is attached hereto as Exhibit 1). Although the ANTC agreement does not exclude Internet-bound traffic from the definition of local traffic for purposes of reciprocal compensation, BA-NY sought to insert language into its agreement with Choice One that would have excluded BA-NY's obligation to pay reciprocal compensation for such traffic.

BA-NY's Joint Reply Affidavit asserts that "BA-NY's effort to negotiate a reasonable resolution of the difficult reciprocal compensation problem should come as no surprise."[1] It is surprising to Choice One, however, that BA-NY sought to explicitly remove its obligation to pay reciprocal compensation for Internet-bound traffic from the terms of the ANTC agreement for purposes of Choice One's adoption of that agreement. Choice One was not "negotiating" an interconnection agreement with BA-NY, rather it merely sought to enter into an new agreement with BA-NY by adopting the rates, terms, and conditions of the ANTC agreement pursuant to § 252(i). It is not clear to Choice One, therefore, why BA-NY concluded that any negotiation of substantive terms was necessary. Moreover, BA-NY's efforts were even more surprising in light of the Commission's March 19th Order that such traffic is local. It is Choice One's understanding that pursuant to that Order BA-NY is obligated to treat such traffic in the ANTC agreement as local. As such, Choice One believed (and still does) that its traffic would be entitled to the same treatment upon adoption of the ANTC agreement.

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[1] *Joint Reply Affidavit of Donald E. Albert, Julie A. Canny, George S. Dowell, Karen Maguire, Patrick J. Stevens and Craig Soloff On Behalf of Bell Atlantic - New York*, filed October 13, 1998 ("Joint Reply Affidavit") at ¶ 152.

Unfortunately, it is not surprising that it was only after Choice One wrote a letter to the Commission on September 28th that BA-NY removed the offensive language from its proposal. BA-NY's assertion in its Joint Reply Affidavit that "at the same time comments were being filed in this proceeding, BA-NY provided Choice One with a revised agreement removing the language to which Choice One objected, but registering BA-NY's continuing disagreement and reserving its rights" is patently incorrect.[2] It was not until October 1, 1998 – three days after Choice One filed its letter in this proceeding and fax-served a copy upon Stephen Hughes of Bell Atlantic[3] – that BA-NY provided Choice One with the revised agreement. (A copy of BA-NY's October 1, 1998 letter is attached hereto as Exhibit 2). Further, it was not until October 8, 1998 that BA-NY advised counsel for Choice One of BA-NY's continued assertion of its position that "the reciprocal compensation provisions set forth in the ANTC agreement do not apply to Internet bound traffic." (A copy of BA-NY's October 8, 1998 letter is attached hereto as Exhibit 3).

CLECs such as Choice One that are seeking to adopt approved agreements pursuant to § 252(i) should not have to "negotiate" new substantive terms with BA-NY. BA-NY's tactics in this instance were an anti-competitive attempt to delay the exercise by Choice One of its Section 252(i) rights, to evade the Commission's March 19th Order, and to generally retard competition. BA-NY's conduct and its attempt to misconstrue the facts in its Joint Reply Affidavit should weigh heavily in the Commission's consideration as to whether BA-NY has shown that the public interest will be served by BA-NY being authorized to offer in-region interLATA service.

Very truly yours,

Eric J. Branfman

Counsel for Choice One Communications Inc.

cc: Andrew Kline, Esq.
Honorable Eleanor Stein
Honorable Jacqueline Brilling
Honorable Judith Lee
Mae Squier-Dow (by fax)
Stephen Hughes (by fax)
Eric N. Einhorn, Esq.
Attached Service List

256508.1

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[2] Joint Reply Affidavit at ¶ 151.

[3] In addition to fax-serving Stephen Hughes, the Bell Atlantic Contract Manager assigned to Choice One's 252(i) request, Choice One also served Bell Atlantic as a party to this proceeding by overnight mail.

EXHIBIT 1

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September 4, 1998

VIA FACSIMILE AND FIRST-CLASS MAIL

Ms. Jennifer Van Scoter
Director, Negotiations and Policy
Telecom Industry Services
Bell Atlantic Network Services
1095 Avenue of the Americas
Room 1423
New York, NY 10036

Re: Request to Enter Into An Agreement For New York Under Section 252(i)

Dear Ms. Van Scoter:

Choice One Communications Inc. ("Choice One") hereby requests that Bell Atlantic enter into an interconnection agreement, pursuant to 47 U.S.C. § 252(i), with Choice One for the State of New York providing the same arrangements, subject to the same rates, terms and conditions, as are contained in Bell Atlantic's agreement with ACC National Telecom Corp. ("ANTC"). The agreement between Bell Atlantic and ANTC was approved by the Public Service Commission ("PSC") in Case No. 97-C-0734 on December 23, 1997.

If you like, we would be happy to prepare a short agreement for signature by the parties incorporating the terms of the ANTC agreement by reference, and submit it to the PSC for approval pursuant to 47 U.S.C. § 252(e). In the alternative, please prepare your standard agreement for our review. I have attached a completed Bell Atlantic "Information Request Form" to assist you. Please let me know how you prefer to proceed.

We appreciate your prompt attention to this matter and look forward to hearing from you.

Sincerely,

Eric J. Branfman
Counsel for Choice One Communications, Inc.

cc: Mae Squier-Dow (by facsimile)
Jeffrey Masoner (by facsimile)
Chris Antoniou (by facsimile)
Sara Cole (by facsimile)
Eric N. Einhorn

250586.1

EXHIBIT 2

Bell Atlantic
1095 Avenue of the Americas, 14th Floor
New York, NY 10036
212-221-5499

Stephen Hughes
Contract Manager

BY OVERNIGHT MAIL

October 1, 1998

Eric J. Branfman, Esq.
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W. Suite 300
Washington, D.C. 20007

Dear Mr. Branfman:

Enclosed please find for execution an Interconnection Agreement between Choice One Communications, Inc. and Bell Atlantic for the State of New York. This agreement is an adoption of the Interconnection Agreement between Bell Atlantic and ACC National Telecom Corp. dated as of November 11, 1997.

Please have your client sign both of the attached signature pages and return both to my attention at the above address. I will then return one fully-executed signature page to you at the earliest possible date.

Please call me at 212-221-5499 should you have any questions.

Very truly yours,

Stephen Hughes

EXHIBIT 3

Bell Atlantic
1095 Avenue of the Americas, 14th Floor
New York, NY 10036
212-221-5499

Stephen Hughes
Contract Manager

BY OVERNIGHT MAIL

October 8, 1998

Eric J. Branfman, Esq.
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W. Suite 300
Washington, D.C. 20007

Dear Mr. Branfman:

I am writing this letter as a follow-up to my October 1, 1998 correspondence containing an Interconnection Agreement between Choice One Communications, Inc. and Bell Atlantic ("BA") for the State of New York. This agreement is an adoption of the Interconnection Agreement between BA and ACC National Telecom Corp. ("ANTC") dated as of November 11, 1997.

Please be advised that it is BA's position that the reciprocal compensation provisions set forth in the ANTC Agreement do not apply to Internet-bound traffic because such traffic is not intraLATA traffic. Notwithstanding the foregoing, BA will, of course, comply with all applicable laws in its treatment of all Internet-bound traffic.

Please call me at 212-221-5499 should you have any questions.

Very truly yours,

Stephen Hughes

CERTIFICATE OF SERVICE

I, Eric J. Branfman, hereby certify that on this 26th day of October, 1998, I served a copy of the foregoing on the following parties by Federal Express.

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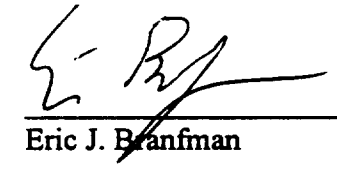


Eric J. Branfman

253094.1

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
GTE CORPORATION,	)	
Transferor,	)	
and	)	CC Docket 98-184
	)	
BELL ATLANTIC CORPORATION,	)	
Transferee,	)	
	)	
For Consent to a Transfer of Control	)	

DECLARATION OF RICHARD S. SZILAGYI

I, Richard S. Szilagyi, declare as follows:

1. I am the Chief Operating Officer of Freedom Ring Communications, LLC d/b/a BayRing Communications ("BayRing"). My business address is 11 Manchester Square, Pease International Tradeport, Portsmouth, New Hampshire 03802.

2. BayRing has been certificated by the New Hampshire Public Utilities Commission to provide local exchange service in that state. Since October 29, 1998, BayRing has provided facilities-based local exchange service in the Portsmouth, New Hampshire exchange area.

3. In the time that BayRing has attempted to implement its interconnection agreement with Bell Atlantic-New Hampshire ("BA"), BayRing has faced intolerable provisioning delays with respect to trunks and pole attachment and underground conduit preparation, and protracted service-affecting outages.

4. As described my July 28, 1998 letter to Thomas B. Getz, Executive Director and Secretary of the New Hampshire P.U.C., attached to my Affidavit as Exhibit A, BA is not adequately provisioning facilities to BayRing. Despite the fact that BayRing submitted accurate trunk

forecasts to BA on February 6, 1998, and submitted access service requests for those trunks, BA informed BayRing on July 23, 1998 that there were no interconnection trunking facilities available to connect to BA's Manchester tandem. Indeed, BA informed BayRing at that late date that it would have to change its network architecture and connect to BA's Dover tandem, for which no facilities were allegedly then available.

5. As a result, this summer BayRing had a fully operational switch and group of employees that were unable to provide service. In fact, BayRing had to turn away customers this summer due to BA's failure to timely provision facilities to BayRing.

6. Only after the New Hampshire P.U.C.'s Staff intervened on virtually a daily basis in mid-to-late August 1998 did BA finally complete trunk provisioning to BayRing. Such intensive and, one would hope, extraordinary BayRing effort to follow up with BA to get its orders completed drains BayRing's resources. Similarly, it should not be necessary for P.U.C Staff to be so intimately involved in overseeing BA's provisioning efforts, yet to date that Staff involvement has been indispensable.

7. BA's provisioning delay should not have occurred at all. BA informed BayRing in July that BA had insufficient capacity to the digital interface at its Manchester tandem to accommodate BayRing. Ultimately, BA connected BayRing's 21 T-1 lines to an additional digital interface BA provisioned to the Manchester tandem at the end of August. The T-1 lines were installed with no routing diversity whatsoever. Although BA claimed its Manchester tandem could not accommodate BayRing in July, since BayRing gained access to the tandem through a new digital interface in August, not a single additional trunk – either BA's or any other New Hampshire LEC's – has been connected to this interface.

Apparently, the allegedly overburdened Manchester tandem has adequately handled all other trunking requests in the state by all carriers since that time. Nevertheless, BayRing's trunking request was delayed and installed without routing diversity.

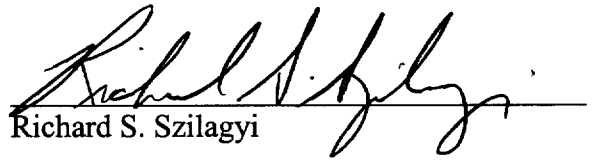
8. BA's failure to provide BayRing with diverse routing has now twice paralyzed BayRing's operations. As described in my October 28, 1998 letter to Antonio Yanez of BA, attached to my Affidavit as Exhibit B, BayRing suffered an outage of 21 T-1 lines for approximately 90 minutes on October 23 because of a problem with BA facilities. The same 21 T-1 lines were out again on October 27 for five-and-a-half hours due to an obviously inadequate cable splice which downed a BA DS3 cable. BA's policy is to restore its own DS3 lines within 30 minutes. This particular DS3 was down over five hours, during which time BayRing's access to the public switched network was paralyzed.

9. While routing diversity may not have totally avoided either or both of these outages, it would certainly have avoided the incapacitating nature of the outages.

10. BA's delay also extends to preparing poles for BayRing attachments and in preparing underground conduit. As discussed in my August 17, 1998 letter to Mr. Getz, attached to my affidavit as Exhibit C, BayRing submitted its first submitted pole attachment applications to BA on October 31, 1997. It was not until April 1, 1998 that BA completed minor work on the poles it ultimately determined required adjustment so that BayRing could attach. Other BayRing pole attachment and underground conduit applications were similarly delayed by as much as nine months. *See* Exhibits D (BayRing Aug. 25, 1998 pole attachment and underground cable application status report), E (Sept. 2, 1998 letter from R. Szilagyi to F. Livingston), and F (Nov. 6, 1998 letter from R. Szilagyi to A. Yanez).

11. Clearly, BA is neglecting these applications and the delay is seriously affecting BayRing's ability to serve customers and foster local competition for New Hampshire.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 20, 1998.



Richard S. Szilagyi

260765.1

260765.1

EXHIBIT A

BAYRING communications

The New Light In Telecommunications

July 28, 1998

Thomas B. Getz
Executive Director and Secretary
New Hampshire Public Utilities Commission
8 Old Suncook Road
Concord, N.H. 03301

Dear Mr. Getz:

Freedom Ring Communications (d/b/a BayRing Communications) has for the past two years been working diligently to begin bringing competitive local telecommunications services to New Hampshire consumers. Despite the various mandates placed upon ILECs by the Telecom Act of 1996, Bell Atlantic (BA) remains the single largest impediment to BayRing commencing service in New Hampshire.

To date BayRing has resisted coming to the Commission regarding Bell Atlantic's processes, which whether intentional or not, have the unfortunate result of significantly delaying competition in New Hampshire.

However, BayRing now feels it has no choice, but to request the aid of the Commission in forcing BA to cease engaging in activities that deter competition. BayRing respectfully requests that the Commission institutes a regulatory structure that will require BA to provision services within time frames that are reasonable and consistent with the intent of the Act.

While BayRing has documented numerous examples of BA's actions, I will use BA's current inability to provide facilities indispensable to BayRing's commencement of operations as an example demonstrative of the type of treatment BayRing has consistently received from BA.

BayRing on February 6, 1998 submitted trunk forecasts to BA. BA required BayRing to produce these forecasts in order to have interconnection trunking facilities available when BayRing was prepared to interconnect. Also, on February 2, 1998 BayRing submitted access service requests (ASRs) for those trunks described in the forecast. Additionally, BayRing met with BA on January 12, 1998, April 28, 1998 and June 23, 1998 to discuss trunk interconnection configuration. These were detailed meetings at which BayRing provided network diagrams, which specified BayRing's trunking requirements. BA representatives at these meetings verified that BayRing's Portsmouth customers would be able to make and receive calls to and from any NXX within New Hampshire via trunks to BA's tandem in Manchester.

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However, on July 23, 1998, after months of delays by BA, BA informed BayRing that there were absolutely no interconnection trunking facilities available for BayRing to connect to the BA tandem in Manchester. Simultaneously, BA for the first time told BayRing that it refused to terminate any interLATA traffic via BayRing's proposed IXC trunks to the Manchester tandem and that BayRing needed to procure another trunk group to Dover for this traffic. Additionally, BA informed BayRing that in order to provide local service in the Portsmouth market, BayRing was now required to establish trunks to BA's Dover "tandem". This last minute change of trunking is completely inconsistent with the network structure BA had originally required BayRing to establish in order to interconnect with BA.

BA informed BayRing that the Manchester tandem will be expanded by 7/31/98. BA also noted that provisioning of trunks subsequent to such an expansion carries a schedule of 22 business days. BA has not committed to the availability of facilities in Dover, as the necessity for these trunks was only provided to BayRing yesterday. Hence, BayRing sits with a fully operational switch and group of employees that are unable to provide service. BayRing is in fact currently turning away customers.

Based on the structure of the market, and current technology, BayRing may never be totally free of Bell Atlantic. However, the details needed for our initial transition into a competitive entity, are the most critical. Without Bell Atlantic's approving our A-links, and without Bell turning up our access trunking, we cannot serve a single customer. Our failure to come to you now could further result in delaying BayRing's ability to provide service to our customers-in-waiting, and in a greater scenario, delay our contribution to competition in NH telecommunications. We feel compelled to solicit assistance specific to BayRing, although in so doing, we may both work to benefit others who enter the market.

BayRing has informed BA of our plans to contact the Commission on this matter. This appears to have induced BA to expand its provisioning efforts. However, based on BA's long history of delays and missed commitments, BayRing remains unconvinced that any increased efforts by BA to provision services in a timely manner will be anything but short-lived.

Further, BayRing believes that BA, on its own, should initiate policies that are in compliance with the intent of the Act and not force entities such as BayRing and the Commission to waste valuable resources policing BA's activities. Absent this, the consumers of New Hampshire will never experience the full benefits of competition.

BayRing appreciates the Commission's attention to this matter and respectfully requests immediate attention as time is of the essence for the consumers of New Hampshire. We remain prepared to discuss this specific issue or any other matter related to BA's actions relative to BayRing service in New Hampshire.

Sincerely,

Richard S. Szilagyi
Chief Operating Officer

Cc: Kathryn M. Bailey, NHPUC
Eric J. Branfman, Esq.
Victor D. Del Vecchio, Esq. Bell Atlantic
William Homeyer, OCA
Barclay Jackson, Esq., NHPUC

EXHIBIT B

BAYRING communications

The New Light In Telecommunications

DELIVERED OCT 2 8 1998
Tom Dreyer by Fax
RN

October 28, 1998

Antonio Yanez
Vice President
TIS Account Management
Bell Atlantic Network Services
222 Bloomingdale Road
Room 272
White Plains, NY 10605

Dear Tony:

I am writing to you to make sure you are up-to-date on events that have transpired over the last several days, resulting in a total loss of service to BayRing Communications, due to the failure of a Bell Atlantic facility.

On Friday, October 23rd, BayRing lost twenty-one T-1s due to a problem Bell Atlantic had in one of your facilities. We were without service for about 1.5 hours. On Tuesday October 27th BayRing once again lost 21 T-1s, due to a problem Bell Atlantic had in the same facility. The fault was due to a coaxial cable between the Manchester 04T and the Alcatel DAX, leading to the loss of a Bell Atlantic DS3. More specifically, the problem was due to a poor splice between the 2nd and 3rd floors, resulting in the cable falling apart in the hands of your technician.

I understand that Bell Atlantic policy includes a commitment to resurrect a down DS3 in 30 minutes. This particular DS3 was down from at least 8:00 A.M. until 1:30 P.M.

During the 5.5 hours that BayRing was paralyzed, Ken Rank worked with us to escalate the concern to the highest levels on the Network Operations side of the Bell Atlantic house. We appreciate Ken's help. My concern, and I am sure, yours as well, is that it took 5.5 hours to fix this problem.

I would like information on the following:

- What was actually done on the 23rd, which resulted in only a temporary restoration of service?
- What was actually done yesterday, the 27th, after the faulty splice was discovered?
- What permanent steps have been taken to insure the reliability of this connection that has failed us twice in three business days?
- Our request to have our traffic rerouted during yesterday's debacle apparently could not be achieved. What steps is Bell Atlantic taking to provide BayRing with traffic diversity?

I will appreciate your investigation and response pertaining to this issue. I would also appreciate a copy of the report Bell Atlantic is filing with the FCC regarding the incident.

Sincerely,

Rick Szilagyi

Richard S. Szilagyi
Chief Operating Officer

Cc: Tom Dreyer, TIS Account Management
Forest Livingston, New Hampshire PUC
Ken Rank, TIS Account Management

DELIVERED OCT 2 8 1998

EXHIBIT C

BAYRING communications

The New Light In Telecommunications

August 17, 1998

Thomas B. Getz
Executive Director and Secretary
State of New Hampshire
Public Utilities Commission
8 Old Suncook Road
Concord, NH 03301

Re: DC 98-137 - BayRing Communications

Dear Mr. Getz:

Thank you for your rapid action in requesting that Bell Atlantic address BayRing's concerns. We are in receipt of Charles P. Paone's letter of August 5, 1998 in which Bell Atlantic (BA) purports to have been "supportive" of BayRing throughout the interconnection process.

While we view Mr. Paone's letter as an attempt to distract the Commission from the facts, BayRing is not interested in wasting our resources or those of the Commission by engaging in a debate of whether or not BA has been supportive of BayRing's efforts to interconnect. We believe BA has not met its interconnection obligations as set forth in the Telecom Act of 1996, and instead has been an impediment to local competition in New Hampshire. A review of the facts, including the chronology attached to BA's letter fully supports this conclusion.

BayRing finds it curious and somewhat disingenuous that BA, in its letter and chronology, neglects to mention the fact that BayRing (per BA's request) provided BA with facilities forecasts in early February. Again, these forecasts were provided to ensure that facilities would be available when BayRing was prepared to interconnect. As of this writing, BA continues to inform BayRing that these facilities are still not available at BA's Manchester tandem and Concord switch. Unavailable facilities include 911 trunks, which are a prerequisite to BayRing providing any switched services. BA's attempt to defend its actions (or lack thereof) by referencing its convoluted internal procedures should glean no sympathy from the Commission.

BA also implies that BayRing refused to access the proper source (the LERG) for various switch codes and locations and hence required support from BA to obtain certain data. Again, the facts and practical reality contradict this assertion.

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In order to acquire a CLLI (switch location code) BayRing contacted Bellcore, the administrative body that issues this code and produces the LERG. BayRing was issued a CLLI code and began to use this code when filling out various BA forms and programming its own switch.

However, BA then informed BayRing that BA had previously assigned this code to another entity (and apparently did not inform Bellcore). Therefore, BayRing needed to obtain a different CLLI code. Despite this substantial inconvenience and delay, BayRing complied with BA's request and was assigned a new code. While this occurred back in February, it continues to haunt us, as recently as a couple of weeks ago when BA started to turn-up T1s. Apparently not all BA departments agree on our CLLI code. We can only hope that this has been completely resolved.

Realizing that Bellcore did not have current data regarding BA's network, BayRing made a decision to obtain CLLI point codes and other trunk information required for interconnection compatibility directly from BA in an attempt to avoid further unnecessary delays. Given the fact that BA controls this information and that the Bellcore LERG is not current, BayRing does not believe this decision was impractical or burdensome to BA. Furthermore, we find it absurd that BA can claim that BayRing, a supposed customer, is burdensome as it pursues accurate information regarding the interconnection process.

BayRing also notes BA's chronology indicates that BayRing's fiber facility was not prepared for interconnection. It is true that we had planned to be operational much earlier in the year. However, we did not plan on simple pole adjustments by BA taking many months to complete. BayRing submitted pole attachment applications to BA on October 31, 1997. Following a detailed field survey of these applications, BA determined that only 15 poles required adjustments in order for BayRing to attach. On April 1, 1998, five months after BayRing applied, BA completed the minuscule amount of work it deemed necessary for BayRing to attach.

Subsequent to BayRing's attachment, BA accused BayRing of creating unsafe conditions (see-attached letter) and threatened to cease processing all other BayRing pole attachment applications. BayRing immediately responded to this allegation by making numerous calls to BA and PSNH field engineers to identify any safety issues. PSNH indicated that they were unaware of any safety violations. After difficulty in getting BA to return calls, BayRing, on April 20, 1998, wrote a letter to BA requesting specific details of the alleged safety violations. (See attached letter). BayRing again wrote to BA on April 29, 1998, requesting substantiation of any safety violation allegations (see-attached letter). On May 5, 1998 BA finally informed BayRing that they were unable to identify a single safety violation. However, BA, through its unfounded allegations had again effectively delayed BayRing's build-out.

Curiously enough, this event occurred soon after a BA facilities supervisor informed BayRing (in extremely offensive and vulgar terms) that he had decided to make all BayRing service request a low priority for his department.

BayRing has documented myriad examples of BA's obstructionist behavior and is, of course, open to discuss these matters with the Staff and Commissioners. However, please understand that BayRing has no desire to wage a correspondence battle with BA before the Commission. To do so, would only further dilute our resources, distracting us from our focus - providing competitive telecommunications service to the consumers of New Hampshire. I remain in the uncomfortable position of writing these letters, as our efforts to make local competition a reality are continually slowed by the process BA forces us to employ. BayRing and New Hampshire can ill afford the continuation of this bizarre scenario.

BayRing again respectfully requests that the Commission order Bell Atlantic to further expedite all requests for service from BayRing. In addition, BayRing requests the Commission order BA to comply with the Commission's letter of July 30, 1998 which request a status report of all services BayRing has ordered from BA, not simply the status of trunk orders.

If I may be of assistance, please do not hesitate to call me. Your time and consideration is greatly appreciated.

Sincerely

Richard S. Szilagyi
Chief Operating Officer

Attachments

Cc: service list

EXHIBIT D

PENDING POLE ATTACHMENT CONDUIT APPLICATIONS WITH BELL ATLANTIC

APP #	DATE FILED	STATUS
NEW1	October 31, 1997	WAITING FOR MAKE-READY WORK TO BE COMPLETED.
PORT6	February 12, 1998	WAITING FOR MAKE-READY WORK TO BE COMPLETED.
PORT8	April 10, 1998	WAITING FOR MAKE-READY WORK TO BE COMPLETED.
PORT9	April 10, 1998	WAITING FOR MAKE-READY WORK TO BE COMPLETED.
PORT10	April 10, 1998	WAITING FOR MAKE-READY WORK ESTIMATE.
PORT12	April 10, 1998	WAITING FOR MAKE-READY WORK ESTIMATE.

PENDING UNDERGROUND CONDUIT APPLICATIONS WITH BELL ATLANTIC

APP#	DATE FILED	STATUS
UGPORT 2	May 1, 1998	WAITING FOR RESULTS OF RECORD SEARCH
UGPORT3	May 1, 1998	WAITING FOR RESULTS OF RECORD SEARCH
UGPORT4	May 28, 1998	WAITING FOR ESTIMATE OF COST TO INSTALL INNERDUCT

EXHIBIT E

BAYRING communications

The New **Light** In Telecommunications

September 2, 1998

Forest Livingston
Public Utilities Commission
State of New Hampshire
8 Old Suncook Road
Concord, NH 03301-7319

Dear Forest:

I would appreciate your assistance on two pending Bell Atlantic underground conduit applications.

UGPORT04

5/29 We mailed this application for spare duct on Pease Boulevard, International Drive and Corporate Drive, main thoroughfares at Pease.

6/19 P. Capewell letter faxed from Bell stating that a check for $3,986.73 to cover the records search and physical survey was required.

6/19 The check for $3,986.73 to cover the records search and physical survey was mailed to Bell.

8/26 Chuck Paone's communiqué includes Lois Ryan's 8/25 input, stating that she is waiting for the cost of make ready from field, and that she plans to pursue.

9/2 I spoke with Pat Capewell. The last comment in Lois's log is the 8/25 update to Chuck Paone.

In late July, the Pease Development Authority decided to open a stretch of Corporate Drive to allow for utility services for the new construction of Franklin Pierce College. To avoid the multi-month waiting process for Bell to resolve such an application, I called Bell to appeal to their logic. On 8/3 I had conversations with Ken Rank, Lois Ryan, and Chuck Rankie to request approval to connect with one of the new Bell manholes being placed as part of the Franklin Pierce College related dig. I also had a conversation with Tony Yanez of Bell. Through some combination of these parties, we were granted permission to connect with the new Bell manhole, with the understanding that the formal paperwork would follow. We were not allowed to connect to stubs that would have given us access to an existing manhole, part of UGPORT04.

UGPORT05

8/4 We processed this application to address the new manhole, as well as a new stretch of conduit connecting this new manhole with the existing Bell manhole mentioned above.

9/2 I spoke with Pat Capewell. The last comment in Lois's log is from 8/6, when she notified Charles Rankie that he can complete the request by supplying a drawing, that there was no need to do a paper search and physical survey. Pat later called back to say that Lois said that the hold-up with UGPORT05 was due to the Pease Development Authority running a sewer line that damaged some of the Bell facilities. I told Pat that since the sewer line in question was quite old and 4-feet in diameter, I doubted that the PDA moved it and damaged anything.

Comments

UGPORT04 has been in the works now for over 90 days. We still do not have the cost of the make-ready (if any) so that we can submit the check, only to wait until that is processed, and the work is completed.

While UGPORT04 includes more area, Bell is very familiar with what they do and do not have in the existing manhole cited above. Yet, if we submit a new application to just cover the manhole, we risk starting the process all over again.

Chuck Rankie stated that Bell would be placing six conduits, which he said included two for BayRing, in the stretch connecting the old and the new manholes. This is the area covered by UGPORT05. As this is all new construction, and BayRing has been considered, how can it possibly take as long as the typical application?

UGPORT05 would provide the newly created link between a component of UGPORT04 and the Franklin Pierce College driveway, where we have built-out our own conduit, based on the college's desire to have the ability to use an alternate provider. The builders of Franklin Pierce have come to us several times with an acute need – dialtone for the phone in the elevator, so they could be granted their Certificate of Occupancy. Without access to this stretch, we have been unable to develop a plan to help them.

The sewer-pipe rationale for slowing UGPORT05 is a poor excuse. Last Thursday it was discovered that work done in the past damaged a stub. Repairing this damage slowed the job by half a day.

I believe the Bell processes we are forced to follow are continuing to delay competition. I would greatly appreciate your help in finalizing these applications.

Sincerely,

Richard S. Szilagyi
Chief Operating Officer

EXHIBIT F

BAYRING communications

November 6, 1998

Antonio Yanez
Vice President
TIS Account Management
Bell Atlantic Network Services
222 Bloomingdale Road
Room 272
White Plains, NY 10605

Dear Tony:

I am writing to you to bring you up-to-date on another obstacle Bell Atlantic has placed in our way, as BayRing endeavors to offer competitive services to customers. This particular problem deals with the length of time it takes for Bell Atlantic to process requests for access to poles and conduit.

Below is the chronology regarding two such requests. These have been pending for over 6 months, and we are now told that we should not expect them until the end of December... and then only if BA has the materials (interduct)!

UGPORT 02

05/01/98	Application from BayRing
05/12/98	Letter to BayRing, estimating costs for conduit search - $1,269.57.
05/21/98	Check from BayRing for $2,539.14 (payment for both of these searches).
09/03/98	Letter to BayRing saying the search is complete. Letter also requests payment to cover BA cost to develop the make-ready cost. ($253.54)
09/10/98	Response form from BayRing, and check for the $253.54.
09/28/98	Letter to BayRing estimating cost of make-ready ($7050.73).
09/30/98	Check from BayRing for $7050.73.
11/05/98	Voice-mail from BA's Lois Ryan saying that the we shouldn't expect the work to be done before the end of December (!) and even then there may be a shortage of materials (!)

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UGPORT 03

05/01/98	Application from BayRing
05/12/98	Letter to BayRing, estimating costs for conduit search - $1,269.57
05/21/98	Check from BayRing for $2,539.14 (payment for both of these searches).
08/27/98	Check from BayRing for administrative costs for $300.00
09/10/98	Response form from BayRing, and check for the $253.54
10/07/98	Letter from BA saying make-ready estimate is $885.31.
10/08/98	Check from BayRing for $885.31, plus applicable form.
11/05/98	Voice-mail from BA's Lois Ryan saying that the we shouldn't expect the work to be done before the end of December (!) and even then there may be a shortage of materials (!).

I would greatly appreciate your immediate investigation. These are not huge tracts running through the center of Manhattan. These are small runs in Portsmouth, New Hampshire. We continue to wait for requests like these. Yesterday's feedback brought it to the point that I must ask for your involvement.

Thanks in advance for your assistance.

Sincerely,

Rick Szilagyi

Richard S. Szilagyi
Chief Operating Officer

Cc: Tom Dreyer, TIS Account Management
Forest Livingston, New Hampshire PUC
Ken Rank, TIS Account Management